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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER Date: **MAY 12 2010**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:


SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry R. New

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a computer consulting company.¹ It seeks to employ the beneficiary permanently in the United States as a computer programmer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, which was certified by the Department of Labor.

The director noted that the minimal requirements for the proffered position as stipulated by the certified Form ETA 750 are a bachelor's degree and two years and two months of prior work experience. The director noted that for consideration in the advanced degree professional classification, a United States baccalaureate degree or a foreign equivalent degree must be followed by at least five years of experience in the profession. The director then determined that the petitioner failed to demonstrate that the job requires a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4). The director denied the petition accordingly.

On appeal, counsel states that the petitioner filed the petition under the advanced degree classification because the beneficiary has a master's degree in engineering from the Indian Institute of Science, Bangalore, India and some ten years of work experience in the development of various computerized application and software. Counsel agrees that the certified ETA Form does not demonstrate that the petitioner sought classification as an advanced degree professional or alien of exceptional ability. Counsel requests that the AAO reconsider the I-140 petition under the EB3 employment-based professional or skilled worker classification.

The record shows that the appeal is properly filed and timely. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the

¹ The AAO notes that the record contains a subsequent I-140 petition filed by the petitioner for the beneficiary that was approved on August 6, 2009 under the EB3 Employment-based visa petition procedures. The record contains Articles of Merger that indicates that the instant petitioner was previously known as [REDACTED] and that it merged with another corporation to become [REDACTED] as of October 1, 2008.

equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Here, the Form I-140 was filed on April 20, 2007. On Part 2.d. of the Form I-140, the petitioner indicated that it was filing the petition for a member of the professions holding an advanced degree or an alien of exceptional ability.

The regulation at 8 C.F.R. § 204.5(k)(4) states in pertinent part that "[t]he job offer portion of an individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent of an alien of exceptional ability."

In this case, the job offer portion of the Form ETA 9089 indicates that the minimum level of education required for the position is a bachelor's degree in a "quantitative field" and that two years of work experience in the proffered position or in application development is required. Accordingly, the job offer portion of the Form ETA 750 does not require a professional holding an advanced degree or the equivalent of an alien of exceptional ability and thus does not meet the requirements for the 2nd preference classification. However, the petitioner requests classification as a member of the professions holding an advanced degree or an alien of exceptional ability and attempts to change this request to that of a skilled worker or professional on appeal. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to United States Citizenship and Immigration Services requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988). In this matter, the appropriate remedy would be to file another petition with the proper fee and required documentation.

The evidence submitted does not establish that the Form ETA 750 requires a professional holding an advanced degree or the equivalent of an alien of exceptional ability, and the appeal must be dismissed.

The AAO notes that both the beneficiary and the proffered position must meet the requirements for the preferred classification sought. In the instant matter, the proffered position as certified on the Form ETA 750 requires less than a bachelor's degree and five years of work experience. Thus, the instant petition cannot be approved as an EB2 classification, regardless of whether the beneficiary possesses a master's degree.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.